

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of Petition :
 of :
CAMEO DIE & LABEL CO., INC. :
for redetermination of deficiency or :
for refund of franchise tax under :
Article 9-A of the tax law for 1968 :
and 1969. :

Cameo Die & Label Co., Inc. having filed petition for redetermination of deficiency or for refund of franchise tax under Article 9-A of the tax law for 1968 and 1969, and a hearing having been held in connection therewith at the office of the State Tax Commission in New York City on October 28, 1971 before John J. Genevich, Hearing Officer of the Department of Taxation and Finance, at which hearing the taxpayer was represented by John Hwang, President, and James Lesage, Vice-President of the Corporation, and Milton Pickman, Certified Public Accountant, and the record having been duly examined and considered by the State Tax Commission,

It is found:

(1) The taxpayer was incorporated under the laws of New York on February 24, 1967 and was engaged in the manufacture and sale of printed labels and tags. It had approximately fifty employees located at its factory and office within New York.

(2) Franchise tax reports were filed by the corporation for 1968 and 1969 claiming a business allocation. The Corporation Tax Bureau disallowed the business allocation on the basis that the taxpayer did not have a regular place of business outside New York. A refund due to overpayment of estimated tax was reduced by the following deficiencies:

	<u>1968</u>	<u>1969</u>
Entire net income	\$62,039.00	\$10,428.00
Tax at 7%	4,343.00	730.00
Tax per report	3,283.00	537.00
Deficiency	1,060.00	193.00

(3) Timely petition for redetermination of deficiency or for refund of tax was filed.

(4) In January 1968 the taxpayer appointed James Thorup exclusive sales representative for eleven western states with the title "western states sales manager." The agreement provided that Mr. Thorup would assume all costs of transportation and auto expenses, and the taxpayer would underwrite reasonable office, telephone, answering service and secretarial costs, subject to advance approval of the taxpayer. Mr. Thorup was allowed to draw a weekly sum of \$150 against commissions.

(5) An office at 227 West Main, Alhambra, California, was rented, on the recommendation of Mr. Thorup, in January 1968. No written lease was drawn up. The monthly rent of \$55 was billed by the realtor to the taxpayer. The Pacific Telephone Company billed the taxpayer for the telephone charges incurred at such office.

(6) The taxpayer proceeded on the premise that the agreement with Mr. Thorup was so structured that the latter was an independent contractor. Accordingly, the taxpayer did not pay any social security tax or unemployment insurance tax on Mr. Thorup's behalf, and did not include the compensation paid to him in computing the wage factor of the business allocation formula. Also, the taxpayer did not file a franchise or income tax report with the State of California.

(7) Section 210.3(a)(4) of the tax law states in part:

"provided, however, that if the taxpayer does not have a regular place of business outside the state other than a statutory office, the business allocation percentage shall be one hundred per cent;"

(8) Section 4.11b of Ruling of the State Tax Commission dated March 14, 1962 states in part:

"A regular place of business is any bona fide office (other than a statutory office), factory, warehouse, or other space which is regularly used by the taxpayer in carrying on its business."

The State Tax Commission hereby

DECIDES:

(A) The office used by the sales representative at 227 West Main, Alhambra, California, is not a regular place of business of the taxpayer, as contemplated by Section 4.11b of the Ruling of the State Tax Commission, since it is actually the place of business of an independent sales representative.

(B) The deficiencies indicated at (2) above are affirmed and the taxpayer's petition for redetermination of deficiency or for refund is denied.

Dated: Albany, New York
this 20th day of October 1972 .

STATE TAX COMMISSION



President



Commissioner



Commissioner